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EXAMINER TARAE, CATHERINE MICHELLE				
ART UNIT 3623		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/733,921

Applicant(s)

RICHARDSON, MARY L.

Examiner

C. Michelle Tarae

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-9, 11-14, 42, 45-48, 52, 54-56, 59-62, 66-76, 78, 80 and 81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-9, 11-14, 42, 45-48, 52, 54-56, 59-62, 66-76, 78 and 81 is/are rejected.
- 7) ☒ Claim(s) 80 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 30, 2007 has been entered.

Claims 80-81 have been newly added.

Claims 42, 56 and 66 have been amended.

Claims 1-6, 10, 15-41, 43-44, 49-51, 53, 57-58, 63-65, 77 and 79 have been cancelled.

Claims 7-9, 11-14, 42, 45-48, 52, 54-56, 59-62, 66-76, 78 and 80-81 are now pending in this application.

Response to Amendment

2. Applicant's amendments to claims 42, 56 and 66 and the addition of claims 80-81 are acknowledged.

Response to Arguments

3. Applicant's arguments with regard to the newly added limitations and claims are moot in view of the new/updated grounds of rejections provided below.

Applicant's arguments with regard to claims 9 and 14 are also moot in view of the updated grounds of rejections provided below.

The remainder of Applicant's arguments has been fully considered, but found unpersuasive. In the Remarks, Applicant argues that the Examiner fails to establish a prima facie showing of obviousness because the rationale for obviousness must be based on the prior art and the knowledge of those of ordinary skill in the art (page 14 of Remarks).

In response to the argument, Examiner respectfully disagrees. Examiner respectfully submits that KSR forecloses Applicant's argument that a specific teaching is required for a finding of obviousness. *KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396*. Also see Federal Guidelines for Determining Obviousness Under 35 USC 103 in View of the Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* Additionally, Examiner notes that the 35 USC 103 rejections below have been updated to reflect the KSR rationale which says that combining prior art elements according to known methods to yield predictable results is obvious. Such rationale does not require each claimed element to be found in a single prior art reference; but, instead, supports the finding of each claimed element in separate prior art references so long as the claimed elements are combined according to known methods and in that combination would have performed the same function as they did separately, and further, that one of

ordinary skill in the art would have recognized that such combination would have yielded predictable results.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7-9, 11-14, 42, 45-48, 69-74, 76-79, 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over www.jobasia.com, Galewitz, Phil. "Desperate Hospitals Begging for Nurses," *Palm Beach Post*, Feb 22, 1998 [hereinafter, Galewitz] and further in view of "Contingency recruiters stake out sizable claims in the executive search field," *Industry Week*, Aug 6, 1979 [hereinafter, Contingency Recruiters].

The following sources explaining the different aspects of www.jobasia.com are considered as describing one reference:

- i. www.jobasia.com (February 1999, archived version) (referred to herein as reference A);
- ii. Article, "Online job markets, most are middle professionals" from *HK Economic Times*, Oct 3, 1998, (referred to herein as reference B);
- iii. Article, "Internet Update Asia 02/19/99," from *Newsbytes*, Feb 19, 1999, (referred to herein as reference C).

www.jobasia.com, Galewitz, and Contingency Recruiters are analogous references because all are concerned with different aspects of the same problem of aiding job seekers to find jobs. For example, www.jobasia.com is a website that allows employers to advertise job positions and allows job seekers to search through those job positions. Galewitz is an article that discusses offering bonuses to nurses that are in high demand. Contingency Recruiters discusses job recruiters who are paid only after they place a job seeker in a job.

As per claim 42, www.jobasia.com discloses a method for placing applicants into jobs comprising the steps of:

broadcasting job listings of employers to the applicants, wherein an employment placement service provider broadcasts the job listings, wherein broadcasting the job listings comprises posting the job listings on a global computer network (reference A, pages 2 and 4; reference C, page 1; www.jobasia.com is an internet website that provides job seekers with job listings from employers.);

identifying, using a computer, an applicant who is hired to fill a job listing of the broadcast job listings, wherein the job listing is for an employer (reference B; www.jobasia.com identifies job seekers who were hired using its service and further classifies the hires into job categories.);

awarding a signing bonus to the applicant, where the employment placement service provider pays the signing bonus (reference B; Job seekers who are hired by an employer through the website are paid bonuses by www.jobasia.com.);

entering the applicant in a pool of applications for a prize drawing, wherein the pool of applicants only includes applications that been hired during a specified period (reference B; Those applicants who were hired during the summertime were entered into a drawing.); and

collecting an advertising fee from the employer, wherein the employment placement service provider collects the advertising fee, wherein the advertising fee includes a fee for the employment placement service provider (reference A, pages 2 and 6; Employers pay advertising fees to advertise their job positions on www.jobasia.com).

Jobasia does not expressly disclose that the advertising fee includes a fee for the signing bonus, and wherein the employment placement service provider pays the signing bonus from the advertising fee, and wherein the advertising fee is paid only for the critical hire positions that are filled and no advertising fees are paid by the employer in relation to the listing or filling of non-critical positions. However, www.jobasia.com does disclose receiving advertising fees from employers (and not from job seekers) (reference A, pages 2 and 6), thereby incorporating the advertising fees into www.jobasia.com's source of revenue. Official Notice is taken that it is an old and well-known business practice for a company to apply its incoming revenue stream to outgoing costs in order to leverage its cash flow. Consequently, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for www.jobasia.com to utilize the advertising fees it collects from employers to pay for the signing bonuses because the advertising fees are part of www.jobasia.com's source of

revenue, thereby allowing www.jobasia.com to efficiently leverage its incoming cash flow to pay for outgoing costs.

Additionally, Contingency Recruiters discloses employment placement service providers who only get paid when a candidate is placed in a job position and who specialize in high demand areas (see abstract). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Jobasia to only pay the advertising fee when a critical hire position is filled because doing so incentivizes the employment placement service provider to fill positions as they are not paid otherwise.

Jobasia does not expressly disclose denoting each job listing as being a listing for one of either a critical or non-critical position and if the filled job listing has been denoted as for a critical position, awarding a signing bonus to the applicant, wherein denoting each job listing comprises: making a preliminary determination, by the employment placement service provider, as to whether each job listing is for a critical position or a non-critical position, wherein a critical position is one that is generally in high demand and for which only a small pool of applications exists and a non-critical position is one that is generally easy to fill; and marking, in a database, each job listing as either a critical position or a non-critical position in accordance with the preliminary determination. Galewitz discloses denoting each job listing as being a listing for one of either a critical or non-critical position, wherein a critical position is one that is generally in high demand and for which only a small pool of applications exists and a non-critical position is one that is generally easy to fill, and if the filled job listing has been denoted

as for a critical position, awarding a signing bonus to the applicant (abstract; bottom of page 1; top of page 2; where hospitals offer signing bonuses to nurses in critical care and other high demand areas during a nursing shortage, where the bonuses vary according to nursing position with the highest bonuses going to nursing positions in the highest demand.). Additionally, Examiner takes Official Notice that at the time of the invention it was old and well known in the art to track job positions in a database as doing so facilitates the management of those job positions. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to designate positions as either critical or non-critical and award a signing bonus to the applicant of the filled critical position because doing so incentivizes applicants to apply for the critical position (see Galewitz, abstract), thereby increasing the quantity of job applications for the critical position, which enhances the probability of receiving an application from a qualified candidate.

Jobasia also does not expressly disclose only if the filled job listing has been denoted as for a non-critical position, entering the applicant in a pool of applications for a prize drawing. However, Examiner takes Official Notice that the use of incentives to encourage people to apply for certain job positions is old and well known in the art (see Galewitz, abstract). Therefore, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to enter applicants of non-critical positions into a pool for a prize drawing because doing so incentivizes applicants to apply for the non-critical position, thereby increasing the quantity of job applications for the non-critical

position, which enhances the probability of receiving an application from a qualified candidate.

Lastly, Examiner respectfully submits that since www.jobasia.com, Galewitz, Contingency Recruiters and Official Notice all teach elements old and well known to the recruiting industry, combining such elements would have yielded predictable results while allowing each element to retain its original function. Accordingly, Examiner respectfully submits that Applicant's invention is obvious because it is a mere combination of old and well known elements to the recruiting industry, yielding predictable results and allowing each element to retain its original functionality in the combination.

As per claim 45, www.jobasia.com discloses the method of claim 42, wherein the step of identifying the applicant who is hired to fill the job listing comprises:

(i) requiring the applicant to reference the employment placement service provider when applying for the job listing (reference A, page 4; Applicants submit their resumes to employers through the jobasia website (i.e., using the QuickApply tool), thereby referencing [jobasia.com](http://www.jobasia.com) when applying for the listing.); and

(ii) receiving, at the employment placement service provider, a notification that the applicant was hired for the job listing (reference B; Jobasia must be notified that an applicant has been hired for a job listing in order to award the hiring bonus to the applicant.).

As per claims 46 and 47, while www.jobasia.com does disclose being notified of a hiring (reference B), www.jobasia.com does not expressly disclose the method of claim 45, wherein the applicant or employer provides the notification. However, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of www.jobasia.com to have the applicant or employer notify jobasia.com of a hiring as doing so places the onus on the applicant or employer, thus relieving jobasia.com of extra information to track and allowing the website to focus on other aspects of its services.

As per claim 48, www.jobasia.com does not expressly disclose the method of claim 47, wherein the employer provides the notification after the employment placement service provider determines that the job listing was deleted and after the employment placement service provider questions the employer. However, jobasia.com does disclose updating the job listings seven days a week and removing the listing at a time specified by the employers (reference A, page 2), which is done to ensure that accurate job listings are presented on the website. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for jobasia.com to have the employer provide the notification after jobasia.com determines that the job listing was deleted and after jobasia.com questions the employer because doing so further supports jobasia.com's goal of maintaining accurate job listings on its website.

As per claim 69, www.jobasia.com discloses the method of claim 42, wherein a job listing of the job listings comprises a title, a job number, a department name, an opening date, an employer name, a description, a job class, a job search class, a

signing bonus amount, an amount of experience required, an amount of education required, an email address and a contact (reference A, pages 2, 4; reference C, page 1; www.jobasia.com provides a database of various employer and job listings data for applicants to search through such as title, employer name, description, job class, education required, signing bonus, contact info, etc.). www.jobasia.com does not expressly disclose all of the listed data for the job listings such as an indicator of whether or not the job is part-time, a number of part-time hours, a start pay from field, a start pay to field, a number of leave days, an indicator of whether or not relocation is offered, a shift type, a flex type, a closing date, a reason closed, a date entered field, an entered by field, a last updated date field, a last updated by field, and a job id. However, it is old and well known in the industry of employment recruitment to include enough information about the employer and the job listing to enable an applicant to make an informed decision about whether or not a job listing is a suitable match. Additionally, such information is considered non-functional descriptive data, which does not hold any functional difference over the prior art. At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of jobasia.com to have a job listing include all of the above-listed information since such information would facilitate an applicant's decision making process by allowing him/her to evaluate the information against his/her own employment/company/salary criteria for deciding whether or not an employer and job listing is a good match.

As per claim 70, www.jobasia.com discloses the method of claim 42, further comprising providing employer information about the employers (reference A, pages 2,

4; reference C, page 1; www.jobasia.com provides a database of various employer and job listings data for applicants to search through such as title, employer name, description, job class, education required, signing bonus, contact info, etc.).

As per claim 71, www.jobasia.com discloses the method of claim 70, wherein the employer information comprises an employer name, an address, a phone number, a fax number, a home page address, an email address, a description, an indicator of whether or not a signing on bonus is offered (reference A, pages 2, 4; reference C, page 1). www.jobasia.com does not expressly disclose all of the listed data for the employer such as an account status, a facility type, a number of beds, a number of employees, an indicator of whether or not a teaching facility, an indicator of whether or not a stat facility, an indicator of whether or not a federal facility, an indicator of whether or not a military facility, a trauma level, an employee healthcare insurance contribution, a total leave amount, an indicator of whether or not a relocation package is offered, an indicator of whether or not a tuition reimbursement is offered, an indicator of whether or not a fitness center is available, an indicator of whether or not a dental program is offered, an indicator of whether or not a vision program is offered, and an indicator of whether or not a day care center is available. However, it is old and well known in the industry of employment recruitment to include enough information about the employer and the job listing to enable an applicant to make an informed decision about whether or not a job listing is a suitable match. Additionally, such information is considered non-functional descriptive data as well as intended use (i.e., for health care employment recruitment), which does not hold any functional difference over the prior art. A

recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of jobasia.com to have a job listing include all of the above-listed information since such information would facilitate an applicant's decision making process by allowing him/her to evaluate the information against his/her own employment/company/salary criteria for deciding whether or not an employer and job listing is a good match.

As per claims 72 and 73, www.jobasia.com does not expressly disclose the method of claim 42, further comprising limiting signing bonuses paid to the applicant to a predetermined number within a defined time period; or wherein the predetermined number comprises two and the defined time period comprises one year. At the time of the invention, it would have been obvious to a person of ordinary skill in the art for www.jobasia.com to limit the number of signing bonuses an applicant can receive within a predetermined time period because doing so prevents applicant's from abusing the signing bonus process, and thus, ensuring only seriously interested applicants accept positions.

As per claim 74, www.jobasia.com discloses the method of claim 42, wherein the job listings include departments of the employers, and wherein the method further comprises:

receiving a search request for job listings pertaining to a specialty occupation (reference A, page 4; Applicants may utilize jobasia.com's various search engines to search for job listings meeting certain criteria.);

identifying pertinent job listings that have departments associated with the specialty occupation (reference A, page 4; Applicants may identify, using jobasia.com's various search engines, job listings that meet certain criteria.); and

returning search results listing the pertinent job listings (reference A, page 4; jobasia.com's various search engines return results meeting job listing criteria to applicants.). www.jobasia.com does not expressly disclose the employers are hospitals. However, employment placement applies to many industries, including the health care industry. Additionally, stating that the employers are hospitals is merely intended use, which does not hold any functional difference over the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Thus, at the time of the invention, it would have been obvious for a hospital to utilize the employment placement service of www.jobasia.com because, like many businesses, hospitals require qualified applicants to fill certain positions, which is a service www.jobasia.com provides.

As per claim 7, www.jobasia.com discloses the method of claim 70, wherein the employer information is uniform criteria for all of the employers (reference A, page 4; Employers can be searched on certain criteria.).

As per claim 8, www.jobasia.com does not expressly disclose the method of claim 70, wherein the employers are health care providers. However, employment placement applies to many industries, including the health care industry. Additionally, www.jobasia.com allows job seekers to search for positions in 36 job areas and over 87 industries (reference A, page 4). Thus, at the time of the invention, it would have been obvious for a health care provider to utilize the employment placement service of www.jobasia.com because, like many businesses, health care providers require qualified applicants to fill certain positions, which is a service www.jobasia.com provides.

As per claim 9, while www.jobasia.com allows job seekers to search for specific companies by name (reference A, page 4), www.jobasia.com does not expressly disclose the method of claim 70, wherein the step of providing employer information further comprises providing employer information about employers that are not posting job listings on the service. However, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *MPEP* § 2106.

As per claim 11, www.jobasia.com discloses the method of claim 70, wherein the step of providing employer information comprises searching for an employer matching particular employer information desired by an applicant (reference A, page 4; reference C, page 1).

As per claim 12, www.jobasia.com discloses the method of claim 11, wherein if the searching does not return a matching employer, then the method further comprises the steps of:

(i) storing the particular employer information desired by the applicant; (ii) periodically searching for the particular employer information desired by the applicant; and (iii) notifying the applicant when the searching returns a matching employer (reference A, page 4; Job seekers can save search criteria in a personal profile and have the profile automatically updated when job ads match.).

As per claim 13, www.jobasia.com does not expressly disclose the method of claim 12, wherein the step of notifying the applicant comprises sending an email to the applicant. However, www.jobasia.com does disclose job seekers registering for the service with an email address and employers communicating with job seekers via email (reference A, pages 2 and 7). Thus, at the time of the invention it would have been obvious to a person of ordinary skill in the art for applicants to be notified via email of job matches because doing so facilitates and expedites information to the applicants, thus making the service more efficient and effective.

As per claim 14, www.jobasia.com discloses the method of claim 12, further comprising the steps of:

storing particular employer information desired by multiple applicants (reference A, page 4; Job seekers can search for companies by name, which is particular employer information desired by applicants.) and analyzing the stored particular employer information to provide information as to demand for certain employer criteria (reference A, page 4; Top of page 4 discusses www.jobasia.com's research regarding the supply and demand for different jobs and job titles.).

As per claim 76, www.jobasia.com discloses the method of claim 70, further comprising allowing the applicant to compare the job listings and the employer information (page 4; The three job search engines, company search and personalized home page of job ads allows job seekers to compare job listings and employer information.).

As per claims 77 and 79, www.jobasia.com does not expressly disclose the method of claim 42, wherein the job listings comprise non-critical hire positions and critical hire positions and wherein the advertising fee is paid only for the critical hire positions that are filled. Galewitz discloses denoting each job listing as being a listing for one of either a critical or non-critical position (abstract; where hospitals offer signing bonuses to nurses in critical care and other high demand areas). However, it is old and well known in the art of the service industry to only charge for services that are rendered, or to only charge for services that are rendered to a customer's satisfaction. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the teachings of www.jobasia.com to have the advertising fee paid only when critical hire positions are filled because doing so enhances the customer

service provided to employers and provides employers incentives to list job positions with the employment service provider as the employers only pay for critical job positions, thus ensuring their return on investment.

As per claim 78, www.jobasia.com discloses the method of claim 42, further comprising allowing the applicant to access informational websites owned by the employment service provider (page 4; The company search, which is through jobasia's website, provides job seekers with information on companies and jobs.).

As per claim 81, www.jobasia.com does not expressly disclose that the employment placement service provider allows employers to broadcast an unlimited number of job listings for non-critical positions without charging any fee to the respective employers in relation to the broadcasting or filling of critical positions. Contingency Recruiters discloses employment placement service providers who only get paid when a candidate is placed in a job position and who specialize in high demand areas (see abstract). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Jobasia to only pay the advertising fee when a critical hire position is filled because doing so incentivizes the employment placement service provider to fill positions as they are not paid otherwise.

6. Claims 52, 54-55 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over www.jobasia.com and Galewitz, Phil. "Desperate Hospitals Begging for Nurses," *Palm Beach Post*, Feb 22, 1998 [hereinafter, Galewitz], and "Contingency recruiters stake out sizable claims in the executive search field," *Industry Week*, Aug 6, 1979 [hereinafter, Contingency Recruiters], as applied above, and further in view of www.replyto.com.

The following sources explaining the different aspects of www.jobasia.com are considered as describing one reference:

- i. www.jobasia.com (February 1999, archived version) (referred to herein as reference A);
- ii. Article, "Online job markets, most are middle professionals" from *HK Economic Times*, Oct 3, 1998, (referred to herein as reference B);
- iii. Article, "Internet Update Asia 02/19/99," from *Newsbytes*, Feb 19, 1999, (referred to herein as reference C).

The following sources explaining the different aspects of www.replyto.com are considered as describing one reference:

- i. Article, "New Web Site Pays Job Seekers to Help Fill High Tech Job Openings" from *Business Wire*, Nov 22, 1999, (referred to herein as reference D);
- ii. Article, "New Web Site Pays \$50, \$500 or More for Your Resume" from *Business Wire*, July 27, 1999 (referred to herein as reference E).

www.jobasia.com, Galewitz, Contingency Recruiters and www.replyto.com are analogous references because all are concerned with different aspects of the same problem of aiding job seekers to find jobs. For example, www.jobasia.com is a website that allows employers to advertise job positions and allows job seekers to search through those job positions. Galewitz is an article that discusses offering bonuses to nurses that are in high demand. Contingency Recruiters discusses job recruiters who are paid only after they place a job seeker in a job. www.replyto.com discusses a recruiting website that pays job seekers hiring bonuses and charges the hiring company a percentage of the job seeker's salary which it uses to pay the hiring bonus.

As per claim 52, www.jobasia.com does not expressly disclose the method of claim 42, wherein the employer designates how much the signing bonus is. www.replyto.com discloses the employer designates the amount of the signing bonus (reference D, page 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of jobasia.com to have the employer designate the signing bonuses as the employer has the best understanding of what signing bonus amounts are commensurate with which positions and, therefore, best attract the desired applicants for the positions, which www.replyto.com has indicated as a goal of the hiring bonus (reference D, page 1).

Additionally, Examiner respectfully submits that since www.jobasia.com, Galewitz, Contingency Recruiters, Official Notice and www.replyto.com all teach elements old and well known to the recruiting industry, combining such elements would

have yielded predictable results while allowing each element to retain its original function. Accordingly, Examiner respectfully submits that Applicant's invention is obvious because it is a mere combination of old and well known elements to the recruiting industry, yielding predictable results and allowing each element to retain its original functionality in the combination.

As per claim 54, www.jobasia.com does not expressly disclose the method of claim 42, wherein the fee for the employment placement service provider is a percentage of the fee for the signing bonus. www.replyto.com discloses the fee for the employment placement service provider is a percentage of the fee for the signing bonus (reference E). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of www.jobasia.com to utilize a fee structure similar to that of www.replyto.com where the fee for the employment placement service provider is a percentage of the fee for the signing bonus because doing so encourages companies to post more job listings since listing the job positions is free until an applicant is hired and awarded a hiring bonus. Encouraging companies to post more job listings provides job seekers a larger job pool to search from, thus enhancing the overall effectiveness of the job placement service, as indicated as a result by www.replyto.com on the bottom of page 1 of reference D.

Additionally, Examiner respectfully submits that since www.jobasia.com, Galewitz, Contingency Recruiters, Official Notice and www.replyto.com all teach elements old and well known to the recruiting industry, combining such elements would have yielded predictable results while allowing each element to retain its original

function. Accordingly, Examiner respectfully submits that Applicant's invention is obvious because it is a mere combination of old and well known elements to the recruiting industry, yielding predictable results and allowing each element to retain its original functionality in the combination.

As per claim 55, www.jobasia.com does not expressly disclose the method of claim 42, wherein the step of broadcasting comprises: (i) notifying a group of employers that the applicant satisfies criteria of the group of employers; (ii) accepting bids for the applicant from the group of employers; and (iii) allowing the applicant to choose a desired bid. www.replyto.com discloses (i) notifying a group of employers that the applicant satisfies criteria of the group of employers (reference D, page 1; Employers identify resume capsules that meet their qualifications and goals criteria.); (ii) accepting recruitment letters for the applicant from the group of employers (reference D, page 2; reference E, page 1; Employers then request a full resume and send a recruitment letter to an applicant matching their desired criteria.); and (iii) allowing the applicant to choose a desired offer/recruitment letter (reference D, page 2; If an applicant is interested in the recruitment letter of an employer, then the applicant permits replyto.com to send the employer the applicant's full resume. Employers may hire applicants through the www.replyto.com website.). Additionally, it is old and well known in the art of employment recruitment for multiple employers to send bids out to qualified applicants and for applicants to choose a desired bid. At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of jobasia.com to enable employers to send bids out to qualified applicants and for applicants to choose a

desired bid because doing so maximizes the potential for each party to achieve their desired goal (i.e., it allows employers to recruit qualified candidates and it allows applicants to seek employers matching their job/employer/salary criteria).

Lastly, Examiner respectfully submits that since www.jobasia.com, Galewitz, Contingency Recruiters, Official Notice and www.replyto.com all teach elements old and well known to the recruiting industry, combining such elements would have yielded predictable results while allowing each element to retain its original function. Accordingly, Examiner respectfully submits that Applicant's invention is obvious because it is a mere combination of old and well known elements to the recruiting industry, yielding predictable results and allowing each element to retain its original functionality in the combination.

As per claim 68, www.jobasia.com does not expressly disclose the method of claim 55, wherein a bid of the bids comprises one or more of compensation, a bonus, and a working condition. www.replyto.com discloses the method of claim 55, wherein a bid of the bids comprises one or more of compensation, a bonus, and a working condition (reference D, page 2; reference E, page 1; Bids may include bonuses as well as recruitment letters describing the company, job position and corporate culture.). Additionally, it is old and well known in the art of employment recruitment to have a bid to an applicant include compensation, a bonus, and a working condition. At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of www.jobasia.com to have a bid include compensation, a bonus, or a working condition since such information would facilitate an applicant's decision making process

by allowing them to evaluate the bid against their own employment/company/salary criteria for deciding whether or not to accept employment from the employer.

7. Claims 56, 59-63 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over www.jobasia.com, www.replyto.com, Galewitz, Phil. "Desperate Hospitals Begging for Nurses," *Palm Beach Post*, Feb 22, 1998 [hereinafter, Galewitz], and further in view of "Contingency recruiters stake out sizable claims in the executive search field," *Industry Week*, Aug 6, 1979 [hereinafter, Contingency Recruiters].

The following sources explaining the different aspects of www.jobasia.com are considered as describing one reference:

- i. www.jobasia.com (February 1999, archived version) (referred to herein as reference A);
- ii. Article, "Online job markets, most are middle professionals" from *HK Economic Times*, Oct 3, 1998, (referred to herein as reference B);
- iii. Article, "Internet Update Asia 02/19/99," from *Newsbytes*, Feb 19, 1999, (referred to herein as reference C).

The following sources explaining the different aspects of www.replyto.com are considered as describing one reference:

- i. Article, "New Web Site Pays Job Seekers to Help Fill High Tech Job Openings" from *Business Wire*, Nov 22, 1999, (referred to herein as reference D);

ii. Article, "New Web Site Pays \$50, \$500 or More for Your Resume" from *Business Wire*, July 27, 1999 (referred to herein as reference E).

www.jobasia.com, Galewitz, Contingency Recruiters and www.replyto.com are analogous references because all are concerned with different aspects of the same problem of aiding job seekers to find jobs. For example, www.jobasia.com is a website that allows employers to advertise job positions and allows job seekers to search through those job positions. Galewitz is an article that discusses offering bonuses to nurses that are in high demand. Contingency Recruiters discusses job recruiters who are paid only after they place a job seeker in a job. www.replyto.com discusses a recruiting website that pays job seekers hiring bonuses and charges the hiring company a percentage of the job seeker's salary which it uses to pay the hiring bonus.

As per claim 56, www.jobasia.com discloses a method for filling job openings comprising the steps of:

broadcasting a plurality of job listings of employers to a plurality of applicants without charging the employers an advertising fee, wherein an employment placement service provider broadcasts the plurality of job listings and wherein broadcasting comprises posting the plurality of job listings on a global network (reference A, pages 2 and 4; reference C, page 1; www.jobasia.com is an internet website that provides job seekers with job listings from employers.);

identifying, using a computer, a job listing of the plurality of job listings for which an applicant of the plurality of applicants was hired, wherein the job listing is for an employer (reference A, page 4; reference B; www.jobasia.com identifies job seekers who were hired using its service and further classifies the hires into job categories.);

paying the applicant a signing bonus, wherein the employment placement service provider pays the signing bonus (reference B; Job seekers who are hired by an employer through the website are paid bonuses by www.jobasia.com.); and

entering the applicant in a pool of applicants for a prize drawing, wherein the pool of applicants only includes applicant that have been hired during a specified period (reference B; Those applicants who were hired during the summertime were entered into a drawing.).

www.jobasia.com does not expressly disclose that the signing bonus is paid from the advertising fee. However, www.jobasia.com does disclose receiving advertising fees from employers (and not from job seekers) (reference A, pages 2 and 6), thereby incorporating the advertising fees into www.jobasia.com's source of revenue. Official Notice is taken that it is an old and well-known business practice for a company to apply its incoming revenue stream to outgoing costs in order to leverage its cash flow. Consequently, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for www.jobasia.com to utilize the advertising fees it collects from employers to pay for the signing bonuses because the advertising fees are part of www.jobasia.com's source of revenue, thereby allowing www.jobasia.com to leverage its incoming cash flow to pay for outgoing costs.

Additionally, www.jobasia.com does not expressly disclose charging the employers only for job listings that produce hirings and only if the job listing for which the applicant was hired was for a critical position. www.replyto.com discloses charging the employers only for job listings that produce hirings (reference E, page 1; www.replyto.com charges companies a percentage of the starting salary of the hiree.). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the employment placement service of www.jobasia.com to utilize a fee structure similar to the employment placement service of www.replyto.com where companies are only charged for hirings because doing so encourages companies to post more job listings since it is free. Encouraging companies to post more job listings provides job seekers a larger job pool to search from, thus enhancing the overall effectiveness of the job placement service, as indicated as a result by www.replyto.com on the bottom of page 1 of reference D.

Additionally, Contingency Recruiters discloses employment placement service providers who only get paid when a candidate is placed in a job position and who specialize in high demand areas (see abstract). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify Jobasia to only pay the advertising fee when a critical hire position is filled because doing so incentivizes the employment placement service provider to fill positions as they are not paid otherwise.

Jobasia does not expressly disclose denoting each job listing as being a listing for one of either a critical or non-critical position and if the filled job listing has been

denoted as for a critical position, awarding a signing bonus to the applicant, wherein denoting each job listing comprises: making a preliminary determination, by the employment placement service provider, as to whether each job listing is for a critical position or a non-critical position, wherein a critical position is one that is generally in high demand and for which only a small pool of applications exists and a non-critical position is one that is generally easy to fill; and marking, in a database, each job listing as either a critical position or a non-critical position in accordance with the preliminary determination. Galewitz discloses denoting each job listing as being a listing for one of either a critical or non-critical position, wherein a critical position is one that is generally in high demand and for which only a small pool of applications exists and a non-critical position is one that is generally easy to fill, and if the filled job listing has been denoted as for a critical position, awarding a signing bonus to the applicant (abstract; bottom of page 1; top of page 2; where hospitals offer signing bonuses to nurses in critical care and other high demand areas during a nursing shortage, where the bonuses vary according to nursing position with the highest bonuses going to nursing positions in the highest demand.). Additionally, Examiner takes Official Notice that at the time of the invention it was old and well known in the art to track job positions in a database as doing so facilitates the management of filling those job positions. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to designate positions as either critical or non-critical and award a signing bonus to the applicant of the filled critical position because doing so incentivizes applicants to apply for the critical position (see Galewitz, abstract), thereby increasing the quantity of job applications for

the critical position, which enhances the probability of receiving an application from a qualified candidate.

Jobasia also does not expressly disclose only if the filled job listing has been denoted as for a non-critical position, entering the applicant in a pool of applications for a prize drawing, and wherein no fees are collected for either the listing or the filling of a non-critical position. However, Examiner takes Official Notice that the use of incentives to encourage people to apply for certain job positions is old and well known in the art (see Galewitz, abstract). Therefore, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to enter applicants of non-critical positions into a pool for a prize drawing because doing so incentivizes applicants to apply for the non-critical position, thereby increasing the quantity of job applications for the non-critical position, which enhances the probability of receiving an application from a qualified candidate.

Lastly, Examiner respectfully submits that since www.jobasia.com, Galewitz, Contingency Recruiters, Official Notice and www.replyto.com all teach elements old and well known to the recruiting industry, combining such elements would have yielded predictable results while allowing each element to retain its original function. Accordingly, Examiner respectfully submits that Applicant's invention is obvious because it is a mere combination of old and well known elements to the recruiting industry, yielding predictable results and allowing each element to retain its original functionality in the combination.

As per claim 59, www.jobasia.com discloses the method of claim 56, wherein the employment placement service provider broadcasts the plurality of job listings, and wherein the step of identifying the job listings comprises:

(i) requiring the applicant to reference the employment placement service provider when applying for the job listing (reference A, page 4; Applicants submit their resumes to employers through the jobasia website (i.e., using the QuickApply tool), thereby referencing jobasia.com when applying for the listing.); and

(ii) receiving, at the employment placement service provider, a notification that the applicant was hired for the job listing (reference B; Jobasia must be notified that an applicant has been hired for a job listing in order to award the hiring bonus to the applicant.).

As per claims 60 and 61, while www.jobasia.com does disclose being notified of a hiring (reference B), www.jobasia.com does not expressly disclose the method of claim 59, wherein the applicant or employer provides the notification. However, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of www.jobasia.com to have the applicant or employer notify jobasia.com of a hiring as doing so places the onus on the applicant or employer, thus relieving jobasia.com of extra information to track and allowing the website to focus on other aspects of its services.

As per claim 62, www.jobasia.com does not expressly disclose the method of claim 61, wherein the employer provides the notification after the employment

placement service provider determines that the job listing was deleted and after the employment placement service provider questions the employer. However, jobasia.com does disclose updating the job listings seven days a week and removing the listing at a time specified by the employers (reference A, page 2), which is done to ensure that accurate job listings are presented on the website. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for jobasia.com to have the employer provide the notification after jobasia.com determines that the job listing was deleted and after jobasia.com questions the employer because doing so further supports jobasia.com's goal of maintaining accurate job listings on its website.

As per claim 63, www.jobasia.com discloses the method of claim 56, wherein the job listing is for a critical hire position (reference A, page 4; Jobasia.com includes professional field jobs that are in high demand such as accounting and information technology.).

As per claim 66, www.jobasia.com does not expressly disclose the method of claim 56, wherein the employer designates how much the signing bonus is. www.replyto.com discloses the employer designates the amount of the signing bonus (reference D, page 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of jobasia.com to have the employer designate the signing bonuses as the employer has the best understanding of what signing bonus amounts are commensurate with which positions and, therefore, best attract the desired applicants for the positions, which www.replyto.com has indicated as a goal of the hiring bonus (reference D, page 1).

As per claim 67, www.jobasia.com discloses the method of claim 66, wherein the employment placement service provider broadcasts the plurality of job listings (reference A, pages 2 and 4; reference C, page 1; www.jobasia.com provides job seekers with job listings from employers.), identifies the job listing for which an applicant of the plurality of applicants was hired (reference B; www.jobasia.com identifies job seekers who were hired using its service and further classifies the hires into job positions.), and charges the employer the advertising fee (reference A, page 6).

8. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over www.jobasia.com, Galewitz, Phil. "Desperate Hospitals Begging for Nurses," *Palm Beach Post*, Feb 22, 1998 [hereinafter, Galewitz] and "Contingency recruiters stake out sizable claims in the executive search field," *Industry Week*, Aug 6, 1979 [hereinafter, Contingency Recruiters], as applied above, and further in view of www.replyto.com and Dossin et al. "Sign-on Bonu\$e\$ Score for Recruiters."

The following sources explaining the different aspects of www.jobasia.com are considered as describing one reference:

- i. www.jobasia.com (February 1999, archived version) (referred to herein as reference A);
- ii. Article, "Online job markets, most are middle professionals" from *HK Economic Times*, Oct 3, 1998, (referred to herein as reference B);
- iii. Article, "Internet Update Asia 02/19/99," from *Newsbytes*, Feb 19, 1999, (referred to herein as reference C).

The following sources explaining the different aspects of www.replyto.com are considered as describing one reference:

- i. Article, "New Web Site Pays Job Seekers to Help Fill High Tech Job Openings" from *Business Wire*, Nov 22, 1999, (referred to herein as reference D);
- ii. Article, "New Web Site Pays \$50, \$500 or More for Your Resume" from *Business Wire*, July 27, 1999 (referred to herein as reference E).

www.jobasia.com, Galewitz, Contingency Recruiters, www.replyto.com and Dossin et al. are analogous references because all are concerned with different aspects of the same problem of aiding job seekers to find jobs. For example, www.jobasia.com is a website that allows employers to advertise job positions and allows job seekers to search through those job positions. Galewitz is an article that discusses offering bonuses to nurses that are in high demand. Contingency Recruiters discusses job recruiters who are paid only after they place a job seeker in a job. www.replyto.com discusses a recruiting website that pays job seekers hiring bonuses and charges the hiring company a percentage of the job seeker's salary which it uses to pay the hiring bonus. Dossin et al. discusses offering signing bonuses to specialized positions that are in high-demand.

As per claim 75, www.jobasia.com does not expressly disclose the method of claim 42, wherein the fee for the signing bonus is based on whether a position of the job listing is one of in high demand and highly compensated and wherein the fee for the

employment service provider is a percentage of the fee for the signing bonus. www.replyto.com discloses that the fee for the employment service provider is a percentage of the fee for the signing bonus (reference E, page 1; The employment service provider charges the hiring company 1% of the starting salary and then splits the fee with the hiree, giving the hiree a .5% of the starting salary as the signing bonus.). Dossin et al. discloses providing signing bonuses to positions that are in high demand and highly compensated (paragraphs 3, 5-6). www.jobasia.com, www.replyto.com and Dossin et al. are analogous arts in that all discuss ways to help employers find potential employees for particular job positions. Additionally, www.replyto.com and Dossin et al. are analogous arts in that both discuss using signing bonuses to incentivize potential employees for particular job positions. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify www.jobasia.com to have the fee for the signing bonus be based on whether a position of the job listing is one of in high demand and highly compensated and wherein the fee for the employment service provider is a percentage of the fee for the signing bonus because having the signing bonus structured in such a way provides incentives to potential employees for the high demand/highly compensated positions (Dossin et al., paragraphs 3, 5-6) and also incentivizes the employment service provider since their pay is based on the signing bonus (i.e., the higher the signing bonus, the higher the fee for the employment service provider; or no hire, therefore, no signing bonus and no fee paid to the employment service provider), thereby enhancing the incentives at both ends of the job search process (the job seekers and the employee seekers).

Lastly, Examiner respectfully submits that since www.jobasia.com, Galewitz, Contingency Recruiters, Official Notice, www.replyto.com and Dossin et al. all teach elements old and well known to the recruiting industry, combining such elements would have yielded predictable results while allowing each element to retain its original function. Accordingly, Examiner respectfully submits that Applicant's invention is obvious because it is a mere combination of old and well known elements to the recruiting industry, yielding predictable results and allowing each element to retain its original functionality in the combination.

Allowable Subject Matter

9. Claim 80 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Price, Margaret. "Can you score with a Contingency Recruiter?," *Industry Week*, Aug 6, 1979 discusses recruiters being paid on a commission basis;
- Sunseri et al. "Whether Hiring or Recruiting, Understanding Executive Recruiting," *Healthcare Financial Management*, May 1992 discusses contingency-based firms;

- "Hartford Life Signs on as Founding Sponsor of Web-Based Job Program for People of Disabilities." *PR Newswire*, Oct 27, 1999 discusses a job placement service provider only being paid when a person is placed in a job; and
- Higginbotham, Julie. "Companies Ante up for Employees," *R & D*, Sept 1999 discusses offering incentives in job offers to people with technical backgrounds.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 571-272-6729.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/C. Michelle Tarae/

Primary Examiner, Art Unit 3623

January 23, 2008